

**112.00 LABOR COMPLIANCE**

Most contracts financed in whole or in part by Federal funds have the *Required Contract Provisions for Federal-aid Construction Contracts (FHWA-1273)* included in the contract documents. These provisions require that all laborers and mechanics employed at the site of work that perform part of the contract work be paid the prevailing wage rates and fringe benefit rates as established by the U.S. Department of Labor (DOL). Laborers and mechanics are defined as those whose duties are manual or physical in nature (e.g. workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial.

The contract provisions are based on:

1. Davis-Bacon Act (payment of prevailing wage rates as determined by the U.S. DOL to all laborers and mechanics on Federal government contracts.
2. Copeland Act (it is a Federal crime for anyone to require a laborer or mechanic to kickback their wages. Requires submittal of weekly certified payroll reports).
3. Contract Work Hours and Safety Standards Act (time and one-half pay for overtime hours, i.e. over 40 hours in any work week).
4. 23 CFR 633 Subpart A
5. 23 CFR 635.309
6. 29 CFR 1, 3, 5

**112.01 PROJECT POSTERS**

The contractor is required to display the posters identified below at the contract site. These posters are given to the contractor at the preconstruction conference. Verify that the contractor is displaying the posters.

1. Wage Rate Information (FHWA-1495)
2. Wage Determination Schedule in the Contract
3. Notice to Employees (FA Projects) (WH-1321)
4. False Statement Poster (PR-1022)
5. Safety Posters (See Section 107)
6. Equal Employment Opportunity Posters (See Section 113)

**112.02 WAGE DETERMINATION CLASSIFICATIONS**

Each contract will contain the DOL published wage determination (WD) applicable to the project. The WD is the listing of wage rates and fringe benefit rates for each classification of laborers and mechanics which the Administrator of the Wage and Hour Division of the Department of Labor has predetermined to be prevailing in a given area for a particular type of construction.

The WD included in the contract will not always include all the classifications needed for the required work on a project. It is the Contractor's responsibility to identify any unlisted classifications including the applicable prevailing wage rates and fringe benefit rates needed for the work. These additional classifications may be added after award only as provided in 29 CFR 5.5(a)(1)(ii).

### Bidding Phase

In response to contractor inquiries regarding the wage determination in the contract:

- Refer the contractor to the contract clause: *Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provide in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii)).*
- Refer the contractor to the DOL website which includes the Prevailing Wage Resource Book ([www.wdol.gov/library](http://www.wdol.gov/library)). The Resource Book provides information regarding what information the DOL needs and how they will evaluate requests for additional classifications and wage rates.
- Refer the contractor to the Wage-Hour Division of DOL if they desire further clarification regarding proper application of the wage determinations to specific upcoming projects ([www.dol.gov/esa/whd](http://www.dol.gov/esa/whd)).
- Inform the contractor that all requests must be submitted on the DOL form SF 1444 and include all necessary supporting documentation.
- Emphasize it is:
  - The contractor's responsibility to determine the correct prevailing wage to use in preparing their bids.
  - The DOL has final approval of additional classifications.

### After Award

- In the pre-construction conference discuss the wage determination and conformance criteria (i.e. are additional classifications needed to for the project). Provide the additional classification form (SF-1444) to the contractor if needed (can also be found at [www.wdol.gov](http://www.wdol.gov)).
- Review contractor request for additional classes and rate in accordance with the criteria for conformance with the contract wage determination (a conformance checklist is contained in the Prevailing Wage Resource Book, available at [www.wdol.gov/docs/wrb2002.pdf](http://www.wdol.gov/docs/wrb2002.pdf)).
  - Work to be performed is not performed by a classification already listed on the applicable wage determination.
  - Requested rate bears a reasonable relationship to other rates in the wage determination.
  - Request complies with the guidance provided in the Prevailing Wage Resource Book.
  - The views of all affected parties have been considered (i.e. Prime Contractor; Subcontractor if applicable, Employees if known, Union Representative if applicable.)
  - Determine whether affected parties are in agreement or have disputes and attempt to resolve disputes in accordance with conformance criteria if possible.
  - Develop Department recommendation and document disputes if any.

- Submit conformance request to DOL review and ruling (SF 1444; related documentation and Department ruling; copy of contract wage determination. The DOL has 30 days to provide a ruling but a lack of response does not indicate approval.
- Communicate the DOL determination to the contractor and other interested parties. Advise the contractor and other interested parties of the reconsideration and appeal process (29 CFR 5.5(a)(9) and 29 CFR Part 7.

### **During the Project**

All contractor and subcontractor (including lower tiers) employees that meet the definition of a mechanic or laborer as defined in the Code of Federal Regulations must have a valid classification:

- Review certified payrolls. Look for classifications not listed in the wage determination or approved by the DOL as an additional classification request.
- Conduct on-site inspections/employee interviews. Identify additional classes if applicable.
- Address all non-compliance complaints and issues.

**Document for the Project File All Discussion and All Actions Taken**

**Consult with the DOL Wage-Hour Division if needed**

**Contact the Construction Section for additional assistance if needed**

### **Zone Differentials**

The WD may indicate different work classification rates depending on established zones. Zone determination is based on the physical place of the site of work. If the physical place of the project is located in two zones, the lower rate applies. Any questions concerning zone-differential pay rates should be referred to the Construction Section.

## **112.03 SITE OF WORK**

Laborers and mechanics must be paid prevailing wage rates and fringe benefit rates at the site of work. Site of work is defined in the Federal code of regulations.

Title 29 CFR 5.2 (l)(1) states *"The site of the work is the physical place or places where the building or work called for in the contract will remain; and any other site where a significant portion of the building or work is constructed, provided that such site is established specifically for the performance of the contract or project"*.

Title 29 CFR 5.2 (l)(2) states that other work areas not located on the site of permanent construction (e.g. job headquarters, tool yards, batch plants, borrow pits, etc.), may be part of the site of the work " . . . *provided they are dedicated exclusively, or nearly so, to performance of the contract or project, and provided they are adjacent or virtually adjacent to the site of the work.* Excluded from the site of work definition are permanent, previously established facilities, even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of the contract.

The Federal regulations do not define what is considered virtually adjacent. The applicability rates must be evaluated on a case-by-case basis. However, the Idaho Transportation Department has determined that all work areas located within a 1-mile distance of the project site will be considered virtually adjacent, unless it can be shown otherwise by the Contractor.

#### 112.04 WARRANTY WORK

Coverage applies to warranty or repair work if it is provided for in the original construction contract and is applicable regardless of whether the work is done 5, 10 or even 20 years after the contract execution.

#### 112.05 EXEMPTIONS

Laborers and mechanics are covered. Personnel who are primarily administrative, executive, or clerical are not considered laborers or mechanics. **However, working foremen who devote more than 20 percent of their time during a workweek to mechanic or laborer duties are classified as laborers or mechanics for the time so spent.**

Other exemptions are as follows:

Apprentices and Trainees – The only laborers and mechanics who can be paid below rates for their work classification are apprentices and trainees provided they are registered in approved programs. Apprentices and trainees are paid at the rates in the applicable approved program.

Survey Personnel - The actual duties of the survey crew members must be considered. Generally speaking, instrument persons, party chiefs and rod persons are not considered laborers or mechanics, and therefore are not covered. However, crew members who are doing manual work (e.g. clearing brush) are covered for the time so spent.

Owner-Operator - This applies only to trucks. The owner-operator concept does not encompass other equipment such as bulldozers, scrapers, backhoes, cranes, drilling rigs, etc. The owner must be driving the truck. Such owner-operators are listed on payrolls with the notation "owner-operator" after each name. Neither hours worked nor wages and fringe benefits paid need be shown. In some cases, an owner-operator has more than one truck employed on a contract and must be a subcontractor. The other truck operators are not classified as an owner-operator.

Ask the driver to see their driver's license, vehicle registration, insurance document and fuel permit. All these documents should show the same name. The owner-operator must also be responsible for both major and minor vehicle repairs and maintenance and for fuel/oil payments.

Individuals operating leased trucks can be considered owner-operators if they provide evidence, satisfactory to the Resident/Regional Engineer, that they have a bona fide lease agreement. If the vehicle is being leased, ask to see the lease agreement. Such existence of a bona fide lease agreement depends on evidence that the individual claiming to be an owner-operator is independently established in his/her own trucking business and that he/she bears ultimate responsibility for operation of the unit and is wholly responsible for cost items (not a corporation or an LLC) such as:

- Maintenance
- Insurance (Comprehensive, collision, liability, etc.)
- Permits, base plates, licenses and taxes
- Fuel
- Oil
- Major and minor repairs
- Ferry charges and toils
- Driver's remuneration

It also must be demonstrated that there is no close or continued supervision of the operation of the truck by the company leasing the truck. This means that the owner-operator may not work on a project upon which the lessor is a prime or subcontractor.

Guards and Watchmen - Employees who serve in no other capacity are exempt. However, the wage rate paid must be at least equal to the current minimum rate under the Fair Labor Standards Act.

Suppliers - The manufacturing and delivery of supply items such as sand, gravel and ready-mixed concrete to the site of work, when performed by companies serving the general public, are usually exempt. The supplier must be able to demonstrate a history of sales prior to the opening of bids for the project.

Truck Drivers - Truck drivers who come onto a site of work location to drop off construction materials are exempt. Truck drivers operating between two sites of work areas are not exempt. Davis Bacon wage rates are *not* applicable to truck drivers under the following types of situations:

- 1) A truck driver is dropping off material from a project material source that is not considered adjacent or virtually adjacent.
- 2) A truck driver is dropping off material from a commercial supplier.
- 3) A truck driver is removing material from the project and taking it to a commercial facility or it is not considered virtually adjacent.

Contact the Construction Section if you have any questions regarding which truck drivers are exempt.

Railroad and Utility Adjustments – The contract provisions are not applicable to: 1) the relocation work done by a public utility or railroad forces, or 2) the relocation done by a contractor engaged by the utility or railroad.

Quality Control/Quality Assurance: Personnel whose duties are material sampling and testing or who make inspections for quality and contract compliance are exempt.

Traffic Control: Personnel whose sole duties are to drop off and pick up equipment are not usually considered to be laborers or mechanics.

## **112.06 CERTIFIED PAYROLL REPORTING**

The submission of certified weekly payrolls is required, unless otherwise stated in the contract and/or agreement.

Payrolls are to be submitted to the Resident/Regional Engineer. In turn, they will be checked and retained as part of the project file. Detailed checking of all payrolls is not necessary. A check of the first payroll and subsequent spot checks fulfills requirements except on certain projects where experience with the individual contractor indicates that a thorough review of each payroll is necessary. A checklist to aid in reviewing payrolls is attached at the end of this section (Exhibit 112-01).

Payrolls must be numbered. Consecutive numbering should be maintained for the prime contractor and for each subcontractor (or sub-subcontractor) that is working on the project. It is not necessary for the contractor to submit payrolls for time periods not worked. When payrolls are not submitted during nonwork periods, the contractor (or subcontractor) should make a statement on the last payroll that no work will be accomplished until further notice. However, the project files should have adequate documentation to substantiate the fact the contractor was not performing work during periods when no payrolls were submitted. When work is resumed after suspension, the next consecutive number should be assigned.

Copies of payrolls must be completely legible. Do not accept faded or blurred copies. If an error is discovered, the payroll should not be returned for correction. A supplemental or corrected payroll should be requested.

There is no mandatory format for a contractor or subcontractor payroll; however, all payrolls must contain the following information:

- A. The project number.
- B. The employer's full name and address.
- C. The employee's address and social security number (first week in which the employees worked on the project only or whenever their address changes).
- D. The employee's
  - Classification in accordance with the contract wage decision determination and any DOL approved additional classifications.
  - Hourly wage rate.
  - The number of hours the employee worked each day. Overtime must be shown separately.
  - The gross amount earned.
  - The itemized deductions made. Authorized deductions include those allowed or ordered by law (such as taxes and liens) and those requested by the employee. Any deductions which are questionable should be verified as correct so that only authorized deductions are included on the payroll.
  - The net amount paid.

Contractor's payrolls are public records and are subject to disclosure, by statute, upon request. When such a request is received, it is suggested they be referred to the party who originated the document. If the individual cannot obtain the information from the Contractor, they should state this in a letter to the District Engineer.

Upon receipt of this letter, the District will mail a copy of the requested information to the individual with employee addresses and social security number blocked out. The cost for providing this service will be in accordance with Financial Services guidelines.

### **Statement of Compliance (WH-348)**

Each payroll is to be accompanied by a statement of compliance, which is to be signed by an authorized agent of the contractor who has knowledge of the facts represented as true. The statement indicates that the payrolls are correct and complete, the wage rates contained therein are not less than those required by the contract wage determination, and the classifications set forth for each laborer or mechanic conform with the work performed. The statement of compliance may be made by one of the following alternates:

- A. The contractor may use Form WH-348, Statement of Compliance, for attachment to the payroll form.
- B. The contractor may use Form WH-347, the Optional Payroll form, which incorporates the statement of compliance on the reverse side.
- C. The contractor may prepare and submit another form, which can be attached to the payroll or contained thereon, as long as identical wording to Form WH-348 is used.

## **112.07 APPOINTMENT AFFIDAVIT**

An appointment affidavit (ITD-1800) is required if a person other than a corporate officer, partner, or the sole proprietor is authorized by the contractor or subcontractor to execute weekly payroll statements.

The affidavit is supplied to the contractor with the notice of intent to award and should accompany the first payroll from the contractor or subcontractor including lower subtiers if any.

In the event of a change in the authorized individual, a new affidavit must be immediately submitted. If the Contractor or Subcontractor is a corporation, the affidavit must be executed by its' president or vice-president.

If the Contractor or Subcontractor is a partnership, the affidavit must be executed by a member of the firm.

## **112.08 FRINGE BENEFIT PAYMENTS**

The minimum rates for fringe benefits are shown in the WD or as established through the additional classification process. Employers may make payment of the required benefits in the following manner:

1. To an established approved program. These programs are approved by the U.S. Department of Labor. Generally, an employee accepts this method of payment of fringe benefits as a condition of employment. This is not an accepted method of payment unless the program is already approved by the U.S. Department of Labor.
2. Programs such as health insurance, life insurance, retirement accounts, savings accounts, etc., where the employee is signatory to the program. The employee must be enrolled in the program and designate the beneficiaries. Acceptance of this method of payment of fringe benefits is based upon the employee authorizing his/her employer to enter the employee in these programs.
3. A direct payment of cash to the employee.
4. Any combination of the above.

Regardless of the method of payment, it must be stated and made clear on the statement of compliance. If payment is by cash, it must be readily ascertained from the payroll.

## **112.09 OVERTIME**

For Federal-aid Projects - all hours worked in excess of 40 hours a week must be paid at one-and-a-half times the basic wage rate. The term "basic wage rate" means the straight time hourly rate actually being paid or the contract minimum rate, whichever is greater. Fringe benefits are applied to overtime as though it was straight time. State holidays will be considered as a normal workday.

For non Federal-aid Projects - all hours worked in excess of 40 hours per workweek must be paid at one-and-a-half times the basic wage rate. The term "basic wage rate" is described in 'A' above.

## **112.10 EMPLOYEE INTERVIEWS**

The Resident/Regional Engineer must conduct employee interviews to verify compliance. Interviews are to be recorded on the Labor Compliance Employee Interview form (ITD-2014). Enough interviews must be conducted throughout the project to ensure a representative sampling has been made for all classes of workers employed on the contract. Interviews should include both contractor and subcontractor(s) employees.

## **112.11 NON -COMPLIANCE**

The steps below are required whenever there is a question of non-compliance. Non-compliance may be uncovered by: 1) certified payroll reviews; 2) employee interviews; and 3) receipt of a complaint by project personnel, labor unions, the Labor Department, or other outside individuals and organizations. Any complaints should be treated confidentially and promptly investigated.



1. When applicable, send a letter to the affected employee(s) by certified mail requesting information (Exhibit 112-02).
2. Notify the contractor of possible non-compliance by letter. In this letter, ask for as applicable: the contractor's help, an explanation of the matter or correction. If it is found that the reporting or reports were in error, ask for an amendment or a corrected report. DO NOT return the reports to the contractor.
3. If the non-compliance is still in question or if it is denied by the contractor, a complete investigation should be made. This should include interviews with the person or persons involved in noncompliance with the contractor's representative and all other personnel involved. It may require an audit of the contractor's records.
4. If the contractor is found to be in noncompliance with the contract requirements, inform the contractor in writing and request that the necessary actions be taken to correct the problem. If there is an underpayment of wages, a supplemental certified payroll must be furnished indicating that restitution has been made. It may be necessary in certain instances to furnish additional proof of payment in the form of photo static copies of both sides of the adjustment check or a signed receipt from the employee.
5. From the time that the possible non-compliance is uncovered until its final disposition, a good chronological record should be kept. The contractor should be kept informed of actions and progress in the investigation at all times (preferably in writing). Seek assistance from the Construction Section and/or the Legal Section.

The most frequent occurrences of non-compliance result from the following two situations:

**Subcontractor Violations** - The prime contractor at times fails to realize that he/she is responsible for his subcontractor's labor compliance and that the contracting agency has no direct contract with the subcontractors and must deal with the prime in these matters. This can result in the prime contractor being responsible for restitution of wages due for the labor violations of subcontractors.

**Employees Working in More Than One Classification** - A contractor may fail to record on the payroll those cases where an employee works in more than one classification for any meaningful period of time (1/2-hour increments or more) with varying pay scales.

## **112.12 SEMIANNUAL LABOR COMPLIANCE ENFORCEMENT REPORT**

The Department is required to file a summary report of labor compliance activities with FHWA (form FHWA-1495) twice annually for the periods of 10/1 through 3/31 and 4/1 through 9/30.

Each Region/Residency shall compile information for Federal-aid projects under their jurisdiction for the period required and submit the reports through the district EEO coordinator to the Construction Section. Provide information for all lines on the report.

District submittals of the report should be received in the Construction Section no later than the end of the first full week following the end of the reporting period.

The Construction Section will accumulate the district-supplied information and submit a statewide report to FHWA.

**Certified Weekly Payroll Review Checklist**

Following is a checklist, which may be used when checking a contractor's payroll.

- A. Is project number on the payroll?
- B. Does payroll show payroll period covered?
- C. Is employee's full name and address shown? (Employee's address and social security number need to appear only on the first payroll on which his or her name appears. Subsequent changes of address will need to be reported.)
- D. Are classifications complete and in accordance with the contract wage decision?
- E. From your knowledge, are workers properly classified for work performed?
- F. If codes are used for classifications, has copy of code been submitted?
- G. From your knowledge, are all hours worked each day shown on the payroll?
- H. Is the Work Hours Standard Act complied with, as to payment of wages for work, in excess of 40 hours a week?
- I. Are wage rates at least equal to those in the contract wage decision?
- J. Are fringe benefits paid as required by the contract wage decision?
- K. Are net wages paid shown on the payroll?
- L. Are deductions allowable or authorized?
- M. Are any apprentices in an approved program and is status shown?
- N. Is payroll mathematically correct?
- O. Does the payroll include the required statement of compliance?
- P. Has the payroll been submitted within one week following the end of the work covered by the payroll?

[Current Date]

Mr. or Ms. \_\_\_\_\_

RE: [Project Number]; [Key Number]  
[Project Name]; Request for Labor Compliance Information

Dear Mr. or Ms. \_\_\_\_\_:

This office is responsible for assuring that employees of contractors engaged in highway construction are paid in accordance with the contract for all hours worked. The purpose of this letter is to ascertain whether you are receiving the proper pay for your work classification and for all hours worked.

This inquiry is being sent to you, rather than conducted on the project site, to ensure your anonymity. Information received regarding this matter is considered confidential, and your identity will not be disclosed to the employer without your written consent.

We would appreciate you answering to the best of your knowledge the attached questions and return them to us. Please use additional sheets if necessary and reference your responses to the numbers on the attachment.

If we do not receive a reply from you within 30 days from the date of this letter, we will consider that you are satisfied that the payments made to you are correct.

Sincerely,

Residency/Regional Engineer

Attachment:

[Project Number]; [Key Number] [Project Name]  
Request for Labor Compliance Information Attachment

The payroll records indicate you were employed by (name and address of company) on the above referenced project from (date) through (date). The records indicate you were employed as a (work classification). The contract wages and fringe benefits for this work classification is (wage and fringe benefit rates)

- 1) Please indicate your work duties and tools used: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- 2) Were you being paid the contract wage and fringe benefit rates? \_\_\_\_ If no, what were the rates? \_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- 3) Were you paid at the rate of time and one-half, for all hours worked in excess of 40 hours per week? \_\_\_\_
- 4) If no, how many hours were you underpaid and on what dates? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- 5) Did the contractor require you to return payments (i.e. kickbacks)? \_\_\_\_ If yes, how much and on what dates? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- 6) What evidence do you have to substantiate underpayments or kickbacks (e.g. time cards, check stubs, diaries, cancelled checks)? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- 7) What was the normal starting time for each day? \_\_\_\_\_
- 8) How much time were you allowed for lunch? \_\_\_\_\_
- 9) Did you ever complain about underpayments or kickbacks? \_\_\_\_ If yes, to whom and what action was taken? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- 10) Do you have anything further to add? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_